

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
VARIANCE STAFF REPORT (#FZV-20-02)
MARION & DUSTI HERRING
NOVEMBER 16, 2020

I. GENERAL INFORMATION

A. Project Description

A report to the Flathead County Board of Adjustment regarding a request from Marion and Dusti Herring for a variance to Sections 3.16.040(3)(A) of the Flathead County Zoning Regulations (FCZR). The variance request would apply to property located at 152 Bjork Drive in Bigfork. The property is located within the Bigfork Zoning District and zoned RC-1 Residential Cluster. The applicant is requesting a 'during or after-the-fact' variance to the front setback requirements of the RC-1 zoning for the principal structure.

B. Application Personnel

Owner/Applicant

Marion & Dusti Herring
17 Swan Way
Bigfork, MT 59911

C. Process Overview

1. Land Use Advisory Committee/Council

The proposed land use is located within the advisory area of the Bigfork Land Use Advisory Committee (BLUAC). The BLUAC will conduct a public hearing on the proposed conditional use permit on November 19, 2020 at 4:00 P.M. at Bethany Lutheran Church, located at 8559 Highway 35, Bigfork, MT 59911. A recommendation from the BLUAC will be forwarded to the Flathead County Board of Adjustment for their consideration.

2. Board of Adjustment

The Flathead County Board of Adjustment will conduct a public hearing on the proposed zoning variance on December 1, 2020 at 6:00 P.M. in the Expo Building at the Flathead County Fairgrounds, located at 265 North Meridian Road, Kalispell, MT 59901. Documents pertaining to this file are available for public inspection in the Flathead County Planning and Zoning Office, located on the second floor of the South Campus Building.

II. PROPERTY CHARACTERISTICS

A. Property Location and Size

The subject property is comprised of two lots which total 0.75 acres and located at 152 Bjork Drive, Bigfork, MT 59911 (see Figure 1 below). The property can be legally described as Lot 62A and Lot 130 of Eagle Bend No. 12 in Section 26, Township 27 North, Range 20 West, P.M.M., Flathead County, Montana.

Figure 1: Subject property (highlighted in blue)



B. Existing Land Use(s) and Zoning

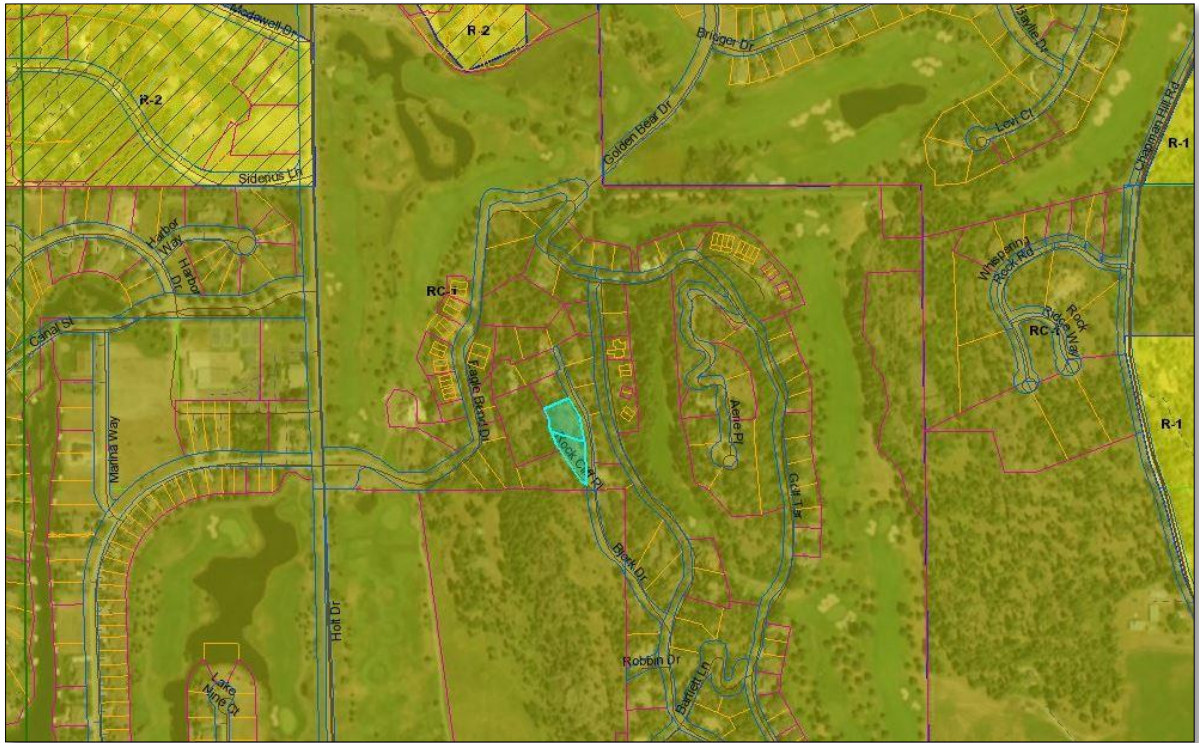
The subject property is located in the Bigfork Zoning District and zoned ‘RC-1 Residential Cluster’. A single-family dwelling and attached garage are currently under construction on the property, which was previously undeveloped. The property contains steep slopes along the western portion of the lot and rock outcroppings throughout.

The RC-1 zoning classification is defined in Section 3.16.010 FCZR as, ‘A district to provide residential theme in a rural environment. The district is primarily intended to encourage a master planned community with a central recreational focus. A full range of public services, such as public water supplies and sewage treatment are generally required to serve the district. The gross density for units to be clustered is one (1) unit per acre (i.e. a one acre lot can only have one unit).’

C. Adjacent Land Use(s) and Zoning

The adjacent surrounding properties are similarly zoned RC-1 (see Figure 2 below). Properties to the north along Bjork Drive are similarly located on a hill. The general character of the area is residential. Several lots within the subdivision are currently undeveloped, including the lot directly to the north and lots directly to the east of the subject property. The average lot size within the subdivision is 0.36 acres.

Figure 2: Zoning surrounding the subject property (highlighted in blue)



D. Summary of Request

The applicant is requesting a ‘during or after-the-fact’ variance for an attached garage within the 20-foot front yard setback required for a principal structure within the RC-1 zone. If a variance is granted, a portion of the garage would be located within 18 feet of the front property line. The application indicates the hardship is a result of the lot size and topography and a variance is needed to build “a reasonable sized garage on the property.”

‘Setback’ is defined in Section 8.18.045 FCZR as, “*The horizontal distance required between the right-of-way or property line, whichever is closest, and the building line.*”

Figure 3: Northeast corner of the garage and Bjork Drive



Figure 4: North side of the garage



Figure 5: Rear of the garage (foreground) and house (background)



III. COMMENTS

A. Agency Comments

1. Agency referrals were sent to the following agencies on September 11, 2020:
 - Bigfork Fire District
 - Bigfork Water & Sewer District
 - Flathead City-County Environmental Health Department
 - Flathead County Road and Bridge Department
2. The following is a summarized list of agency comment received as of the date of the completion of this staff report:
 - Bigfork Water and Sewer District
 - Comment: “Bigfork Water and Sewer does not have any issue with granting the variance for FZV-20-02.” Email received September 16, 2020
 - Flathead County Road and Bridge Department
 - Comment: “[...] At this point in time, the County Road Department does not have any comments on this request.” Letter received September 25, 2020

B. Public Comments

1. Notification was mailed to property owners within 150 feet of the subject property on November 10, 2020 pursuant to Section 2.05.030(2) of the Flathead County Zoning Regulations. Legal notice of the public hearing on this application will be published in the November 15, 2020 edition of the Daily Interlake.
2. Public Comments Received

As of the date of the completion of this staff report, written public comments have been received from three (3) individuals regarding the requested variance. The comments were in

support of the variance request. It is anticipated any individual wishing to provide public comment on the proposal will do so during the public hearing scheduled for December 1, 2020. Any written comments received following the completion of this report will be provided to the Board and summarized during the public hearing.

IV. CRITERIA REQUIRED FOR CONSIDERATION

Per Section 2.05.030 of the FCZR, what follows are review criteria for consideration of a variance request, as well as suggested findings of fact based on review of each criterion. It should be noted Section 2.05.030 of the FCZR states, *‘No variance shall be granted unless the Board (of Adjustment) finds that all of the following conditions are met or found to be not pertinent to the particular case.’*

A. Strict compliance with the provision of these regulations will:

1. Limit the reasonable use of the property

The application states, “Compliance with the provisions would limit us usable square footage and the ability to fit a reasonable sized garage on the property.” The RC-1 zone requires a 20 foot setback from the front property line which would reduce the buildable area adjacent to Bjork Drive. The applicant is requesting an 18-foot setback from the front property line in order to accommodate an attached garage, which is currently under construction and measures 31 feet in length and 30 feet in width, totaling 930 square feet in size. The garage is attached to a single-family dwelling, which is also currently under construction and has a floor area of 3,494 square feet. According to the applicant’s site plan, the northeast corner of the garage encroaches on the front yard setback.

Based on staff’s site visit, there appears to be adequate buildable area several feet beyond the structure, towards the rear of the property. The garage could be constructed farther back on the lot, which would place it outside the front yard setback without reducing the square footage. Alternatively, the width of the garage could be reduced from 30 feet to 28 feet and likely still accommodate two vehicles.

Finding #1: Strict compliance with the regulations would not limit the reasonable use of property because the applicants could construct a garage in accordance with the setback requirements.

2. Deprive the applicant of rights enjoyed by other properties similarly situated in the same district:

Surrounding properties are similarly zoned RC-1 and are situated on a hill that encompasses much of the Eagle Bend development. Staff utilized Montana Cadastral to analyze properties along Bjork Drive that are currently developed with garages. Three of the properties to the north contain garages which are 616 square feet, 732 square feet, and 744 square feet. Four of the properties to the south contain garages which are 696 square feet, 784 square feet 1008 square feet, and 1344 square feet. Additionally, the two adjacent lots to the west along Rock Cliff Place contain garages which are 576 square feet each.

The proposed garage is 930 square feet in size. If the width of the garage was reduced by two feet to meet the front setback requirement, the garage would be 868 square feet, which is larger than the average garage size in the surrounding area. Alternatively, it appears there is adequate buildable area to the rear of the structure to accommodate a larger garage.

Finding #2: Strict compliance with the regulations would not deprive the applicants of rights enjoyed by other properties similarly situated in the same district because the applicants could construct a garage that is larger than the average garage size in the surrounding area.

B. The hardship is the result of lot size, shape, topography, or other circumstances over which the applicant has no control.

The application states, “The hardship is a result of the lot size and topography. The lot is long and skinny with large rock outcroppings on one side and a cliff drop off on the other backside. These are topographic features we can not change.”

The property is located within the Bigfork Zoning District, which was adopted on September 27, 1993. The lots were created in 1991 as part of the Eagle Bend No. 12 Subdivision, prior to the current owner purchasing the property. The applicant is currently in the process of aggregating the two lots which total 0.75 acres. The average lot size within the subdivision is approximately 0.36 acres. As the application indicates, the lot is narrow towards the southern boundary and contains rock outcroppings and steep slopes which reduce the buildable area.

Although there are development constraints due to topography, there appears to be adequate buildable area to accommodate a reasonable sized garage on the property. As previously stated, the garage could be located farther back on the lot, or the width of the garage could be reduced.

Finding #3: While the topography of the lot would limit the size and location of the garage, there does not appear to be a hardship based on circumstances over which the applicant has no control because there is adequate buildable area for a reasonable sized garage outside of the required setbacks.

C. The hardship is peculiar to the property.

The application states, “The hardship is a very difficult lot as are several other lots in the neighborhood.” The lots directly to the north of the subject property, along the west side of Bjork Drive, are similarly situated on top of a hill with steep terrain and rock outcroppings, and would likely have building areas similar to the subject property.

Figure 5: Properties to the north of the subject property



Finding #4: The alleged hardship does not appear to be peculiar to the property because properties to the north are similarly situated at the top of a hill, contain steep slopes and rock outcroppings, and would have a building footprint similar to the subject property.

D. The hardship was not created by the applicant.

According to the application, “The rocks and cliff were already existing on the property and not created by us.” The subject property formerly consists of two lots that were created by Eagle Bend No. 12 Subdivision, which was platted in 1991, prior to the current owner purchasing the property. As previously stated, the applicant is currently in the process of aggregating the two lots which does not affect the topography or reduce the buildable area. While the applicant was aware of the lot size, shape, and topography when the property was purchased, the property owner did not create the alleged hardship.

Finding #5: The alleged hardship was not created by the applicant because the alleged hardship relates to topographic features which already existed on the property.

E. The hardship is not economic (when a reasonable or viable alternative exists).

The application states, “The variance is not being asked for for economic reasons. The variance is being requested because there is not an alternative to pushing the home further away from the street due to the rock cliffs on the backside of the property.”

The applicant requested the variance after construction of the garage had already started. Alternatives exist which would comply with the setback requirements of the RC-1 zone because there is adequate buildable area on the lot to accommodate a reasonable sized garage. Although a reasonable or viable alternative exists, there would likely be additional development costs since the garage is currently under construction.

Finding #6: The hardship appears to be economic because the property contains adequate buildable area outside the setbacks to accommodate a reasonable sized garage, however, a portion of the garage has already been constructed within the front yard setback.

F. Granting the variance will not adversely affect the neighboring properties or the public.

The subject property is located on Bjork Drive, which is a private, paved, dead-end road within a 40 foot wide right-of-way. Lots directly to the east, across the road, are currently undeveloped. If granted, the variance would allow for a portion of the garage to be built within 18 feet of the front property line and road right-of-way. Based on staff’s site visit and the submitted site plan, it appears as though there would be adequate off-street parking areas on the property.

Several public comments were received from surrounding property owners in support of the proposed variance. No comments were received from the Bigfork Fire District and the Bigfork Water and Sewer District indicated no concerns regarding the proposal.

Finding #7: Granting the variance would not adversely affect neighboring properties or the public because reducing the front setback to 18 feet would not impact access any more than if the garage was constructed to meet the setback requirements, the Bigfork Water and Sewer District indicated no concerns, and no comment was received from the Bigfork Fire District.

G. The variance requested is the minimum variance, which will alleviate the hardship.

The application indicates the requested variance to reduce the front setback from 20 feet to 18 feet is a minimum amount and would increase the buildable area to accommodate an attached garage on the lot. As previously stated, the applicant could move the garage two feet towards the rear of the lot or reduce the size of the garage and no variance would be required. The request

does not appear to be the minimum required because another alternative exists that would not require a variance.

Finding #8: The variance requested does not appear to be the minimum variance which would alleviate the alleged hardship because the garage could be constructed outside of the setback area and no variance would be required.

H. Granting the variance will not confer a special privilege that is denied other similar properties in the same district.

The application states, “As far as we can tell granting this variance will not confer a special privilege that any other neighbor has been denied.”

Many of the lots in the vicinity of the subject property are currently undeveloped. Several similar lots to the north contain garages that are smaller than the proposed garage and appear to meet the setback requirements of the RC-1 zone, despite the presence of slopes and rock outcroppings.

Finding #9: Granting a variance would likely confer a special privilege that is denied to other properties in the district because similar properties in the vicinity that are developed appear to meet the setback requirements of the RC-1 zone and similar undeveloped lots will be subject to the same setback requirements when built-out.

V. SUMMARY OF FINDINGS

1. Strict compliance with the regulations would not limit the reasonable use of property because the applicants could construct a garage in accordance with the setback requirements.
2. Strict compliance with the regulations would not deprive the applicants of rights enjoyed by other properties similarly situated in the same district because the applicants could construct a garage that is larger than the average garage size in the surrounding area.
3. While the topography of the lot would limit the size and location of the garage, there does not appear to be a hardship based on circumstances over which the applicant has no control because there is adequate buildable area for a reasonable sized garage outside of the required setbacks.
4. The alleged hardship does not appear to be peculiar to the property because properties to the north are similarly situated at the top of a hill, contain steep slopes and rock outcroppings, and would have a building footprint similar to the subject property.
5. The alleged hardship was not created by the applicant because the alleged hardship relates to topographic features which already existed on the property.
6. The hardship appears to be economic because the property contains adequate buildable area outside the setbacks to accommodate a reasonable sized garage, however, a portion of the garage has already been constructed within the front yard setback.
7. Granting the variance would not adversely affect neighboring properties or the public because reducing the front setback to 18 feet would not impact access any more than if the garage was constructed to meet the setback requirements, the Bigfork Water and Sewer District indicated no concerns, and no comment was received from the Bigfork Fire District.
8. The variance requested does not appear to be the minimum variance which would alleviate the alleged hardship because the garage could be constructed outside of the setback area and no variance would be required.
9. Granting a variance would likely confer a special privilege that is denied to other properties in the district because similar properties in the vicinity that are developed appear to meet the setback

requirements of the RC-1 zone and similar undeveloped lots will be subject to the same setback requirements when built-out.

VI. CONCLUSION

Section 2.05.030(3) of the Flathead County Zoning Regulations states a variance shall not be granted unless all of the review criteria have been met or are found not to be pertinent to a particular application. Upon review of this application, the request to allow for a reduced front setback is generally not supported by the review criteria and the Findings of Fact listed above.

Planner: EA